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States Court of Appeals
for the Third Circuit

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Lauckner v United States

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-5747

ALAN K. LAUCKNER

v.

UNITED STATES OF AMERICA,
Appellant

v.

JOHN HUG; PAUL E. COSTELLO; THOMAS J.
GIACOMARO; UMBERTO J. GUIDO, JR.;
WILLIAM McGLYNN; LEONARD A. PELLULO,
Counterclaim Defendants

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 93-cv-01594)

Argued: June 29, 1995

PRESENT: HUTCHINSON*, ROTH and WEIS, Circuit Judges

(Filed October 23, 1995)

* The Honorable William D. Hutchinson participated in the oral argument and Opinion in the above case but died before the Opinion could be filed.

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OPINION OF THE COURT

PER CURIAM

Appellant, the United States of America, appeals an order of the United States District Court for the District of New Jersey holding that an Internal Revenue Service ("IRS") assessment of a penalty against Umberto J. Guido, Jr. ("Guido"), under section 6672 of the Internal Revenue Code (the "Code"), was time barred by the three year statute of limitations contained in Code section 6501(a).

Section 6672 of Title 26 provides:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

26 U.S.C.A. § 6672 (West Supp. 1994). Section 6501(a) of the same title states that "[e]xcept as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed." 26 U.S.C.A. § 6501(a) (West 1989). Because the IRS's section 6672 assessment against Guido was made more than three years after the relevant returns were deemed to have been filed, the District Court held that the IRS's assessment was time barred. The IRS contends the district court is wrong because no statute of limitations, including the one contained in section 6501(a) of the Internal Revenue Code, applies to IRS assessments under section 6672. While it admits that it maintained its contrary position for over 30 years, it contends that recent decisions of the court compel the conclusion that the IRS's prior interpretation of the statute is erroneous.

We disagree and will affirm the district court's order dismissing the IRS's section 6672 claim as time barred by the statute of limitations contained in Code section 6501(a) for the reasons given in the district court's opinion reported at Lauckner v. United States, No. 93-1594 (D.N.J. May 4, 1994).